IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION NO.16159 of 1995

Between:

L.Nagarathnam Naidu, S/o.Venkataswamy Naidu,
R/o. kotlapalle, H/o. Potukanuma, Thalapalapalle Post,

Puthalpat Mandal, Chittoor District.

..... PETITIONER

AND

1 The Deputy Registrar/ Officer on Special Duty, The Chittoor

District Co-Op. Central Bank Ltd., Chittoor , Chittoor District.
2 The Secretary, Erracheruvupalle Primary Agricultural Co-op.

Society, Kondreddi Kondriga, Puthalpat Mandal, Chittoor

District.
3 The Sales Officer, District Central Co-Operative Bank (DCCB),
Chittoor ,Chittoor District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of MANDAMUS to declare the notice of sale of immovable property in E.P. No. 168/94-95, dated 2-7-1995 of the 1st respondent as illegal, unjust and contrary to law and Consequently directing the respondents not to enforce the same, to release the schedule mentioned properties from sale.

Counsel for the Petitioner: MR.S.V.MUNI REDDY

Counsel for the Respondents: MR.P.M.GOPAL RAO

The Court made the following :

ORAL ORDER:

This Writ Petition is filed seeking a writ of Mandamus to declare the notice of sale of immovable property issued in E.P.No.168/94-95, dated 2.7.1995 by the first respondent as illegal, unjust and contrary to law and consequently to direct the respondents not to enforce the same and to release the schedule mentioned properties from sale.

It is alleged by the petitioner that the second respondent-society sanctioned him a loan for the purpose of establishment of poultry farm, and released the first instalment of Rs.24,000/-, but did not release the remaining instalments. It is his case that without giving him any notice, the first respondent passed an award terming him as a defaulter in respect of the above loan and in pursuance thereof the second respondent issued the impugned notice for sale of his immovable property for recovery of the sum of Rs.30,553/- in connection with the said loan transaction. The petitioner submitted that he is not a defaulter, inasmuch as he repaid a total amount of Rs.15,377/- towards the said loan, and his share capital amount of Rs.5,579/- is with the second respondent. Assailing the impugned notice as illegal and contrary to law, the present writ petition is filed.

Denying the allegations made in the affidavit filed in support of the writ petition, the respondents filed counter. It is stated that the petitioner was sanctioned a loan of Rs.73,600/- for establishment of poultry, by the second respondent-society and a

sum of Rs.24,600/- was disbursed as first instalment, and since the petitioner has not utilized the first instalment amount as per the loan policy, further instalments were not released to him. It is also stated that out of the amount paid by the petitioner, an amount of Rs.5,110/- only was credited to the principal amount, and the remaining amount was credited towards interest, overdue interest, etc., as per the terms of the loan. Regarding share capital amount, it is stated that it is within the domain of the members of the society.

The respondents submitted that the petitioner committed default in paying the loan instalments due on 01.03.1992 and 01.03.1993 and hence, the second respondent filed Arbitration reference under Section 71 of the A.P. Co-operative Societies Act (for short "the Act"). The Arbitrator issued notice to the petitioner, and the same was received by petitioner's brother who is co-executant of the mortgage bond in the present loan transasction. Having received the notice as such, the petitioner failed to appear before the Arbitrator, who passed Award-Certificate, dated 1-4-1994 and a copy thereof was also served on the petitioner. Pursuant thereto, the second respondent issued the impugned notice to the petitioner for sale of the immovable property of the petitioner towards recovery of the loan amount due. The respondents also submitted that the petitioner has to prefer appeal under Section 76 of the Act to the Co-operative Tribunal, against the Award passed by the Arbitrator under Section 71 of the Act, and without exhausting that remedy, he filed the present writ petition. Thus, the respondents pray for dismissal of the writ petition.

Heard the learned counsel for the petitioner and the learned Government Pleader for Cooperation.

At the time of admitting the writ petition, interim stay was granted and later the same was vacated as per the orders dated
18-01-1997 passed in W.V.M.P. No.2532 of 1996.

The averments made in the writ petition are disputed question of facts, and in view of the specific averments made in the counter-affidavit filed by the respondents, there are no merits in the writ petition warranting interference under Article 226 of the Constitution of India.

Accordingly, the writ petition is dismissed. No costs.

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N.V. RAMANA, J

Date: 23-08-2004

Nsr/Svv

To

1 The Deputy Registrar/ Officer on Special Duty, The Chittoor

District Co-Op. Central Bank Ltd., Chittoor , Chittoor District.
2 The Secretary, Erracheruvupalle Primary Agricultural Co-op.

Society, Kondreddi Kondriga, Puthalpat Mandal, Chittoor

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